

No. 22-7090

Supreme Court, U.S.
FILED

JAN 17 2023

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Frank Gallardo — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Frank Gallardo
(Your Name)

1918 E 3rd St.
(Address)

Pueblo, CO 81001
(City, State, Zip Code)

(719) 415-2743
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- 1, Motion for Acquittal because there was INSufficient evidence to Submit the case to Jury.
- 2, Brandi Tonkel's Testimony Should not have Been allowed its an abuse of discretion, FRE rule 807(b) Judge Viken said tonkel was an expert under Daubert because tonkel testified in her court and when tonkel testified She said She never testified in federal court before.
- 3, Gallardo's Signature was Forged on a consent to Continuance and was deprived of a speedy trial.
- 4, A mistrial Should have been granted when numerous individuals wearing vests saying "Bikers against child abuse" Attended the trial, Attended to certain witnesses, and milled around the courtroom and its environs.
- 5, Gallardo was deprived of his right to testify.
- 6, The Indictment was defective in that it failed to State that Gallardo is Indian and His correct name.
- 7, Gallardo's instruction on specific intent as Proposed should have been Granted.
- 8, Judge Viken denied Jurors request to Leave and said you will not Leave till there is a unanimous decision.

LIST OF PARTIES

[/] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Mr. Matthew w. Thelen , Mr. Kevin Koliner , Mr. Eric D Keldeman
U.S. District Court
District of South Dakota " " "
302 U.S. courthouse
Rapid city, SD 57701

1/
Rehearing en Banc Granted, Judgment **RELATED CASES** U.S. v. Rouse, 8th Cir. (SD) February 6, 1997
United States of America plaintiff-appellee v. Desmond Rouse, Defendant-appellant.
United States of America plaintiff-appellee v. Jesse Rouse, Defendant-appellant.
United States of America plaintiff-appellee v. Garfield Feather, defendant-appellant.
United States of America plaintiff-appellee v. Russell Hubbeling, defendant-appellant.
Nos. 95-1554, 95-1556, 95-1558, 95-1559 Submitted Oct. 16, 1995.

Decided NOV. 12, 1996 The Court of appeals Bright, Circuit Judge
2, United States court of appeals, Eighth Circuit United States of America appellee -
v. Guy Randy White Horse, appellant NO. 02-1199 Decided: January 15, 2003
3, United States court of appeals for the ninth circuit United States v. Cruz
August 11, 2008, argued and submitted, Billings, Montana; February 10, 2009 Filed
No. 07-30384.

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U.S. v. Gabe, 237 F.3d 954 (8 th Cir. 2001)	2, 11
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28 USC 1291	1
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U.S. v. Titlbach, 339 F.3d 692 (8 th Cir. 2003)	3, 15
U.S. v. Turner, 602 F.3d 778 (6 th Cir. 2010)	3, 15
U.S. v. Velard, 214 F.3d 1204 (10 th Cir. 2000)	2, 14
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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 28, 2022

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: December 27, 2022, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment Violation

The Fourteenth Amendment Violation

Violated my right to a hung Jury

Violated my right to ~~an~~ mistrial

My Signature was forged on a Speedy trial waiver

Violation of Federal court rules. Fed rule 807(b)

Violation of Federal court rules 807 were not met

Judge Lied and said Tonkel was an expert under Daubert

he knows because she (Tonkel) testified in he's (Judge) court before

B, Tonkel testified: "She (Tonkel) said she never had ever testified in federal court TT, Vol, 122. Hearsay statements are not admissible under 807 to bolster or corroborate the testimony of a complaining witness. U.S. v. Peneaux, 432 F3d 882, 893 (8th Cir. 2005)

The INDICTMENT was DEFECTIVE it failed to state that Gallardo was Indian and His Correct name.

There was INSUFFICIENT EVIDENCE to Submit the case to the Jury. PROSECUTOR asking leading questions and there was no inculpatory physical evidence and Prosecutor keep say raped and Speaking of Jearm Thunder Hawk rapping AB.

Judge and prosecutor allowed a Bikers against child abuse Attend the trial and ATTENDED to certain witnesses and guarded the court room doors.

Prosecutor did not allow my witnesses she threaten to have one arrested and so forth

STATEMENT OF THE CASE

On or about March 12 and March 14, 2015, it is alleged that Gallardo did knowingly engage in and attempt to engage in sexual contact and cause or attempt to cause sexual contact with a minor Indian child who had not attained the age of twelve years by the intentional touching through the clothing of the genitalia, groin, inner thigh, and buttocks of the minor child with the intent to abuse, humiliate, harass, degrade, and arouse and gratify his sexual desires. On May 19, 2015, an initial indictment was filed, which was superseded on August 23, 2016, charging Gallardo with two counts of abusive sexual contact in violation of 18 USC 1152, 2244(a)(5) and 2246(3) DCD 4, 83.

On August 29, 2016, a jury trial was held in Rapid City, SD, and on August 31, 2016, Gallardo was found guilty of both counts. DCD 91, 94, 99. The evidence at trial was that Gallardo was in a marriage to the child's mother that was rocky in the least and tumultuous at its worst in the time immediately preceding the time frame of March 2015, dates when the offenses allegedly occurred. It is alleged that on the first instance Gallardo asked the child if she wanted to go with him on the tractor to feed cattle, while in the tractor, the minor child testified that she felt defendant's middle on her behind through the clothing. A day or so later, the child testified that she was laying by Gallardo playing around in the house with her mother present in the same room. While her mother went to the bathroom, the child testified that Gallardo touched her vaginal area through clothing. The child had previously been the victim in a sexual abuse case involving a family member where she offered testimony in that previous prosecution. Subsequent to the guilty verdict, Gallardo secured other counsel and on December 29, 2017, filed a motion renewing his motion for acquittal and for a new trial, which was denied on October 17, 2018, primarily because the motion was untimely but alternatively that the motion and evidence did not warrant relief on the merits of the motion. DCD 189.

REASONS FOR GRANTING THE PETITION

I am an Innocent man and Because the Judge and Prosecutor my Lawyer all violated my rights and my Constitutional rights. Ther is no evidence to prove this I didn't get to take the stand and my right to my speedy trial was taken from me and there callous disregard to violate the Laws and and the Constitution and even the federal court rules Just to get an Innocent man put in prison Just for money is wrong and needs to be corrected. for the Judge to tell me that there is no such thing as a mistrial is wrong and for him to Lie too for Someone to so he can be right is callous and is a deliberate abuse of discretion/Authority. for the Judge and Prosecutor and my Lawyer to say that my signature is not a forged on the document (Speedy trial waiver) and when I Gallardo ask for everyone to take a hand writing analysis the Judge said no but we well do an hand writing analysis on you Mr. Gallardo because I (Judge) know it's your signature. Analysis came back on my signature and it stated that someone else did forge Frank Thunder Hawk-Gallardo's signature and the Judge Just said that's Just he's (Curt Baggett) opinion but it wasn't Just that when they (Courts 8th cir.) used him. So also because the enSufficient evidence and Brandi Tonkel's Testimony is not allowed 807 rule and Specific intent instruction I ask for was not allowed and the mistrial should of been allowed because of the Biker gang and I was not allowed to Testfy The Indictment was defective and my witnesses was not allowed. the Alleged Victim and mother relative was a Jury member. The Alleged Victim and mother reCanted their story and the FBI Lied on the stand and also did not tell of ~~mothe~~ of Alleged Victim reCanted their story Because they (FBI/DOS) said suzette Just said that because of her hormones was up because she was Pregnat.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Frank Hallenbeck

Date: 1-16-2023